

REMARKS

The Office Action mailed December 1, 2006, has been received and reviewed. Claims 38 and 39 have been cancelled. Claims 1-10, 13-22, 25-34, 37 and 40 are currently pending in the application. Claims 1-4, 6, 7, 9, 10, 13-16, 18, 19, 21, 22, 25-28, 30, 31, 33, 34, 37 and 40 stand rejected. Claims 5, 8, 17, 20, 29 and 32 have been objected to as being dependent upon rejected base claims, but the indication of allowable subject matter in such claims is noted with appreciation. Applicant has amended no claims, and respectfully requests reconsideration of the application as presented herein.

Claim Objections

The Office Action objects to claims 38 and 39 because they should be cancelled based upon Applicant's election of Group I.

Applicant hereby further cancels claims 38 and 39 which were part of unelected and cancelled Groups II and III. Accordingly, Applicant respectfully requests the objection be withdrawn.

Claim Rejections**35 U.S.C. § 103(a) Obviousness Rejections**

Obviousness Rejection Based on U.S. Patent No. 6,711,413 to Heidari in view of U.S. Patent No. 6,157,815 to Collins et al.

Claims 1-4, 6, 7, 9, 10, 13-16, 18, 19, 21, 22, 25-28, 30, 31, 33, 34, 37 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Heidari (U.S. Patent No. 6,711,413) in view of Collins et al. (U.S. Patent No. 6,157,815). Applicant respectfully traverses this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-4, 6, 7, 9, 10, 13-16, 18, 19, 21, 22, 25-28, 30, 31, 33, 34, 37 and 40 are improper because the elements for a prima facie case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art references must teach or suggest all the claims limitations.

Claims 1, 13, 25, 37 and 40

Regarding independent claims 1, 13, 25, 37 and 40, Applicant's claims include claim elements not taught or suggested in the cited references. Applicant's independent claims 1, 13, 25, 37 and 40, each recite, in part, *"broadcast-paging message content indicates whether the network has announced availability of on-demand broadcast content"*.

The Office Action alleges:

What Heidari does not specifically disclose is the paging messages also include a repeated network transmitted broadcast paging message that occurs multiple times for each scheduled transmission of the call-paging message; and wherein the *broadcast-paging message content indicates whether the network has announced availability of on-demand broadcast content*. However, Collins teaches these limitations [col. 10: line 30-col. 11:line 65]. (Office Action, p. 3; emphasis added.)

Applicant respectfully asserts that the Collins reference appears to teach or suggest no such thing. At the specific recitations to the Collins reference, as alleged in the Office Action, the Collins reference appears to be entirely silent regarding the substance or content of a "broadcast paging message" and appears to be concerned with placement or location of the broadcast messages in the broadcast slots and not the content of the broadcast messages. Furthermore, any teaching or suggestion of the content of broadcast messages in the Collins reference appears simply to teach or suggest "[b]roadcast messages may also be provided by private parties[,] [a] typical example of this would be the case were an employer wishes to provide a short message to its employees in the area." (Collins, col. 4, lines 20-23).

While the Collins reference may teach or suggest conventional Short Messaging Service (SMS) such as 'sending messages to employees', neither the Collins reference nor the Heidari reference (by the Office Action's admission), teach or suggest Applicant's claim element where the *"broadcast-paging message content indicates whether the network has announced availability of on-demand broadcast content"* as claimed by Applicant in independent claims 1, 13, 25, 37 and 40.

Therefore, since neither the Heidari reference nor the Collins reference teach or suggest Applicant's claimed invention including the claim element of where the *"broadcast-paging message content indicates whether the network has announced availability of on-demand broadcast content"*, these references, either individually or in any proper combination, cannot render obvious, under 35 U.S.C. §103, Applicant's invention as presently claimed in independent claims 1, 13, 25, 37 and 40. Accordingly, Applicant respectfully requests the rejection of presently presented independent claims 1, 13, 25, 37 and 40 be withdrawn.

Claims 2-4, 6, 7, 9, 10, 14-16, 18, 19, 21, 22, 26-28, 30, 31, 33 and 34

The nonobviousness of independent claims 1, 13, 25, 37 and 40 preclude a rejection of claims 2-4, 6, 7, 9, 10, 14-16, 18, 19, 21, 22, 26-28, 30, 31, 33 and 34 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, the Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 13, 25, 37 and 40 and claims 2-4, 6, 7, 9, 10, 14-16, 18, 19, 21, 22, 26-28, 30, 31, 33 and 34 which depend therefrom.

Objections to Claims 5, 8, 17, 20, 29 and 32/Allowable Subject Matter

Claims 5, 8, 17, 20, 29 and 32 stand objected to as being dependent upon rejected base claims, but are indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form. Applicant respectfully acknowledges the allowable subject matter and maintains the patentability of the rejected base claims upon which these allowable claims depend.

CONCLUSION

Claims 1-10, 13-22, 25, 34, 37 and 40 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned attorney.

Respectfully submitted,

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